

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	Cause No. 1:13-cr-0214-RLY-DML
)	
ELIJAH BRENT HOWARD,)	- 01
)	
Defendant.)	

REPORT AND RECOMMENDATION

On May 27, 2015, the Court held a hearing on the Petition for Warrant or Summons for Offender Under Supervision filed on March 4, 2015. Defendant Howard appeared in person with his appointed counsel, Gwendolyn Beitz and Sara Varner. The government appeared by Brad Shepard, Assistant United States Attorney. U. S. Parole and Probation appeared by Officer Shelly McKee.

The Court conducted the following procedures in accordance with Fed. R. Crim. P. 32.1(a)(1) and 18 U.S.C. § 3583:

1. The Court advised Defendant Howard of his rights and provided him with a copy of the petition. Defendant Howard waived his right to a preliminary hearing.
2. After being placed under oath, Defendant Howard admitted violations 4 and 8. [Docket No. 22.] Government orally moved to dismiss violation 5 and the Court granted the same. Violations 1, 2, 3, 6, and 7 had been previously adjudicated.
3. The allegations to which Defendant admitted, as fully set forth in the petition, are:

<u>Violation Number</u>	<u>Nature of Noncompliance</u>
4	<p>“The defendant shall refrain from any unlawful use of a controlled substance.”</p> <p>On February 16, 2015, Mr. Howard provided a urine specimen which tested positive for cocaine. Mr. Howard admitted using cocaine.</p> <p>As previously report to the Court, on October 11, 2014, the offender provided a urine specimen which tested positive for cocaine. He admitted using cocaine and signed an admission report of positive urinalysis.</p>
8	<p>“The defendant shall reside for a period of up to six months at a Residential Reentry Center (RRC) as directed by the probation officer and shall observe the rules of that facility.”</p> <p>As previously reported to the Court, the offender was subject to random breathalyzer testing while a resident at the Residential Re-Entry Center. On October 11, and 24, 2014, the offender was tested and registered a positive reading for alcohol, which violates the rules of the facility.</p>

4. The parties stipulated that:
 - (a) The highest grade of violation is a Grade B violation.
 - (b) Defendant’s criminal history category is III.
 - (c) The range of imprisonment applicable upon revocation of supervised release, therefore, is 8 to 14 months’ imprisonment.

5. The parties jointly recommended a sentence of 8 months to be served in the Federal Bureau of Prisons with no supervised release to follow. Defendant further requested placement as close to Indianapolis, Indiana as possible with a nonresidential drug treatment program.

The Magistrate Judge, having considered the factors in 18 U.S.C. § 3553(a), and as more fully set forth on the record, finds that the Defendant violated the conditions in the petition, that his supervised release should be revoked, and that he should be sentenced to the custody of the

Attorney General or his designee for a period of 8 months, with no supervised release to follow. The Court will recommend placement at a facility close to Indianapolis, Indiana with a nonresidential drug treatment program. The Defendant is to be taken into custody immediately pending the District Judge's action on this Report and Recommendation.

The parties are hereby notified that the District Judge may reconsider any matter assigned to a Magistrate Judge. The parties have fourteen days after being served a copy of this Report and Recommendation to serve and file written objections with the District Judge.

Dated: 06/01/2015

A handwritten signature in black ink, appearing to read "T. Baker", written over a horizontal line.

Tim A. Baker
United States Magistrate Judge
Southern District of Indiana

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